IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 67 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOEM TAX

Versus

KAILASH TEA COMPANY

Appearance:

1. INCOME TAX REFERENCE No. 67 of 1991

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1

MR MJ SHAH with MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1984-85:-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the sales-tax amount is paid before the filing of the return, the provisions of section 43-B would not be applicable?"

2. We have heard Mr Akil Kureshi learned counsel for the revenue and Mr MJ Shah learned counsel for the respondent-assessee.

3. Our attention is invited to the decision of the Apex Court in the case of Allied Motors P. Ltd. vs. CIT, 224 ITR 677 wherein the Apex Court has held that the first proviso to section 43-B makes it clear that section 43-B will not apply in relation to any sum which is actually paid by the assessee in the next accounting year, if it is paid on or before the due date for furnishing the return of income in respect of the previous year, in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with the return.

Following the aforesaid decision, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

4. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-